IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.66/2002

1. Mr. Nelson Fernandes,

2.Mrs. Vinia Fernandes,

Both residents of Orchid Enclave,
Dactolem, Vasco-da-Gama
Goa, 403802.

3.Mrs. Vilma Soares,

4.Mr. Joseph C Soares(since deceased)
represented through Lrs.

5.Mrs.Madeline Pereira

Appellant No.5 is represented by
constituted attorney Appellant No.1
(Registered Address) ..... Appellants.

V/s.

1. Special Land Acquisition Officer,
South Goa,KRCL,Amey Guest
House, Davorlim Road, PO
Navelim Salcete,Goa, 403 707.

2.The Chief Engineer,Konkan
Railway Corporation Ltd.,
4th floor Souza Towers,
Church Square, Panaji,
Goa, 403 001.

3.Shri Elesbao Pereira,

4.Mrs. Maria Raynor Pereira,
Both residing at,
Elray Building,
Mangor,Vasco-da-Gama .... Respondents.

Mr. J. Godinho, Advocate for the appellants.

Mr. E. Afonso, Advocate for the respondent nos. 1 & 2.

FIRST APPEAL NO.75/2002

1. Special Land Acquisition Officer(South Goa)
Konkan Railway Corporation Limited,
Amey Guest House,Davorlim Road,
P.O. Navelim,Salcete Goa, 403 707

2.Chief Engineer,
Konkan Railway Corporation Ltd.,
Rawanfond,near Margao Railway Station,
Margao-Goa. .... Appellants.

V/s.

1. Elesbao Pereira
2. Maria Raynor Pereira
3. Madeline Pereira
4. Vinia Fernandes
5. Nelson Fernandes
6. Vilma Soares
7. Josepha Soares
all residents of 2 Happy Apartments
Vasco-da-Gama, Goa. .... Respondents.

Mr. E. Afonso, Advocate for the appellants.

Mr.J. Godinho, Advocate for the respondent nos.3,4,5,6,7(a) to (d).

Mr. V.A. Lawande, Advocate for the respondent nos.1 & 2.

CORAM : A.P. LAVANDE &
N.A. BRITTO, JJ.

DATE : 1st March, 2005.

J U D G M E N T: (Per BRITTO)

These appeals are filed by both the parties in Land Acquisition Case No.58/96 against the Judgment/Award dated 29.8.2001 of the learned Additional District Judge, South Goa, Margao.

2. The parties hereto shall be referred to in the names as they appear in the cause title of the said case.

3. Briefly stated, by virtue of Notification issued under Section 4 (1) of the Land Acquisition Act, 1894 and published on Gazette dated 5.8.1994 the Government acquired about 22225 sq.metres of land in villages Sancoale and Cortalim of Mormugao Taluka for the purpose of construction of new B.G. Line for Konkan Railway. By subsequent corrigendum the said area was reduced to 19986 sq.metres. In the said acquisition what was involved was an area of 11,875sq.metres from survey no.14/3 of Cortalim village belonging to the applicants.

4. The Land Acquisition Officer by his award dated 25.8.1995 awarded the applicants compensation at the rate of Rs.4/- per sq.metre.

It may be noted that Rs.4/- per sq.metre was the rate awarded by the Land Acquisition Officer for untenanted, bharad/coconut land covering the said Notification.

5. The applicants being dissatisfied with the said award got a reference made to the District Court, and, in the said reference claimed enhancement of compensation at the rate of Rs.750/- per sq.metre. In support of their case for enhancement the applicants produced two Sale Deeds, both dated 13.12.93 at Exh.Aw.1/B and Exh.Aw.1/C of small plots of land admeasuring 285 and 257 sq.metres respectively, both sold at the rate of Rs.250/- per sq.metre, and in the same village. The applicants also examined a registered valuer by name Pratima Kumar who in fact is an architect and who valued the applicants' property at the rate of Rs.500/- per sq.metre. The applicants also examined one of the sellers of the plot Sale Deed Exh.Aw.1/B. The respondents did not lead any evidence.

6. The learned Addl. District Judge by his Award dated 29.8.2001 awarded compensation at the rate of Rs.192/- per sq.metre. The learned Addl. District Judge took average of prices of both the Sale Deeds, though in fact both the Sale Deeds reflected the same price, and, thereafter taking a deduction of 33% towards

development charges arrived at the said market value of Rs.192/- per sq.metre.

7. The applicants have filed the present appeal and as stated by Shri Godinho, the learned Counsel of the applicants, the applicants claim compensation at the rate of Rs.750/- per sq.metre. This has been stated inspite of the fact that the applicant (Aw.1 Nelson) had claimed Rs.590/- per sq.metre and the applicants' own valuer, the said architect Kumar had valued the applicants' land at the rate of Rs.500/- per sq.metre.

8. There is no dispute nor there could be any that the applicants' land was situated near about the ferry point at Cortalim and as stated by Aw.2 Kumar in Settlement Zone S2 and at a distance of about 200 metres from the Police Outpost, petrol pump, a shipyard,a warehouse and a school being situated at a distance of 1 km. from the acquired land. She also stated that prior to the acquisition, electricity, telephone and water facilities were available at the acquired land. However, in our view, the learned Addl. District Judge has rightly rejected the valuation made by her at the rate of Rs.500/- per sq.metre. The opinion of Aw.2 Kumar was not based on any known methods of valuation but solely on the basis of the facilities available. Moreover, Aw.2 had

not given any reasons in support of her opinion. An opinion of an expert is as good or as bad as the reasons given in support of the same.

9. The learned Addl. District Judge has also rightly rejected the self-serving evidence of Aw.1 Nelson in support of the applicants' claim for enhanced value of trees the value of which has been awarded by the Land Acquisition Officer. It may be noted that the award of L.A.O. -Exh.Aw.1/D shows that the trees were valued by the technical staff of the Directorate of Agriculture and Dy. Conservator of Forests and therefore has got to be presumed as correct.

10 In our view the learned Addl. District Judge was not justified in principle to take an average of the price of two Sale Deeds and apply the same for fixing the compensation payable to the applicants. The learned Addl. District Judge, in our view does not appear to have done any exercise to find out the comparative advantages and disadvantages of the plots of the Sale Deeds vis-a-vis the acquired land. Although Aw.3 Bartholomeu stated that the plot sold by him was not a developed plot and that earlier they used to cultivate paddy in the said lands, this statement made by him was with a clear view to help the applicants. From the Sale Deed

produced by the applicants namely Aw.1/B it can be seen that the same pertains to a developed plot which was developed by making roads, drainages, etc. as required under the Planning Laws and the sub-divisions made were also approved by the Town and Country Planning Department as well as the Village Panchayat. Aw.1 Nelson hesitatingly also accepted the position that the sale deeds were of developed plots when he stated that it was possible that the owners of the property of both the Sale Deeds had developed their property by making roads, drainages,etc., though initially he had stated that they were low-lying paddy fields and could not get a better rate.

11. The only question therefore is whether any of the said two Sale Deeds could be used as a guide for the purposes of fixing compensation to the acquired land and in our view the same could be used but by making further deductions. Admittedly, both the plots were situated in the same village. Although the plots of both the Sale Deeds namely Exh.Aw.1/B and Aw.1/C were in respect of developed plots the acquired land was hilly having a height of about 30 metres from the road level. Aw.1 Nelson had stated that they were allowed by the Konkan Railway Corporation to have an access across the railway line since their remaining property was landlocked, through the acquired land, but the fact remained that to carry out the development of such land, which was not at one

level, the applicants would have to spend a considerable amount towards the development namely, levelling, terracing, roads, etc. In our view considering the nature of applicants' land which was hilly at least a deduction of 65% ought to have been taken by the learned Addl. District Judge and not 33% as done by him. It is common knowledge that after the bridge was constructed over the Zuari river the place where the acquired land was situated had comparatively lost its significance. As can be seen from the Sale Deeds, the plots of the said Sale Deeds were situated abutting a road which connects Pale to National Highway No.17. From this one can certainly gather that the plots of the said Sale Deeds were situated in a fast developing locality which is now known as 'Verna Plateau' where a number of industries have come up. Not only that, the distance between the acquired land and the plots of the Sale Deeds was about 3 kms., according to the applicants themselves. If that is so, the learned .Addl. District Judge ought to have made a further deduction of at least 10%. Further, the learned Addl. District Judge completely lost sight of the fact that the price fetched for plot of Sale Deed Aw.1/B was in respect of a small plot of land of 385 sq.metres while the acquired land was 11,692 sq.metres. Prices fetched from small plots cannot be applied to lands covering large area. It is common knowledge when building sites are required to be made of large tracks of land

there is what is known as waiting time in the market before which plots can be sold. Money also remains blocked for sometime. A further deduction ought to have been made on this count and at least of 10%. In our view considering the location of the acquired land vis-a-vis its nature and the plot of the Sale Deeds , the learned Addl. District Judge ought to have made a deduction of at least 85%. Having made the said deduction in our view the price of the acquired land works out to Rs.37.50 which we deem it to be appropriate to round off to Rs.38/- per sq.metre. In view of the aforesaid finding, both the appeals shall stand answered accordingly. The price of the acquired land shall therefore be Rs.38/- per sq.metre. The compensation paid towards the trees to be adjusted from the compensation fixed herein. Needless to observe the applicants would be entitled to all consequential statutory benefits. Parties to bear their own costs.

A.P. LAVANDE, J

N.A. BRITTO, J